

Page 130

1 we filed with the court. And I am  
2 not going to list them all here,  
3 but they are listed in that  
4 category.

5 And as we have said in other  
6 depositions we listed somebody for  
7 every category, noting in our  
8 objections and in our  
9 communications with counsel, that  
10 we didn't believe that all  
11 categories were proper categories  
12 for inquiry in the 30(b)(6)  
13 deposition, as we believe this  
14 category is not.

15 MR. LEWIS: Do you direct  
16 the witness not to answer any  
17 questions in this category,  
18 development of the --

19 MS. HARDING: I have allowed  
20 the witness to answer, and he's  
21 answered he didn't know. I just  
22 wanted to note that for the record  
23 to the extent that you are  
24 complaining that he is not --

Page 131

1 MR. LEWIS: I am not  
2 complaining about anything. I am  
3 just asking questions.

4 I wanted to ask more  
5 questions in this area, and I was  
6 asking you if you are going to  
7 direct -- you are claiming  
8 privilege?

9 MS. HARDING: I am not going  
10 to have a blanket objection, but I  
11 wanted to remind counsel of that  
12 objection. And then you can ask  
13 questions, and we can go from  
14 there.

15 BY MR. LEWIS:

16 **Q. So your involvement in the**  
17 **development of the TDP was, as you**  
18 **described earlier? You just reviewed it,**  
19 **correct?**

20 A. Yes, a draft.

21 **Q. Were there any negotiations**  
22 **between you and the ACC concerning the**  
23 **language of the TDP?**

24 MR. LIESEMER: Object to the

Page 132

1 question.

2 MS. HARDING: Object to the  
3 form, and I think the witness has  
4 already asked and answered.

5 THE WITNESS: I think I may  
6 have participated in a phone call  
7 where drafts were discussed in  
8 discussions with ACC and FCR  
9 representatives and Grace and  
10 Grace's counsel, but I don't have  
11 a specific recollection.

12 BY MR. LEWIS:

13 **Q. Do you have any knowledge of**  
14 **the preparation of the documents,**  
15 **including the drafts of the TDP?**

16 A. Again, I described my  
17 involvement and the knowledge I have. I  
18 was provided with copies of the drafts  
19 early on in the process and reviewed them  
20 and advised Grace and Grace's counsel and  
21 my comments based on my experience in  
22 asbestos litigation. But the primary  
23 drafting role was with the ACC and FCR,  
24 as it probably should be.

Page 133

1 **Q. Why do you say it probably**  
2 **should be?**

3 MS. HARDING: Object to  
4 form.

5 THE WITNESS: Because their  
6 constituency will ultimately be  
7 the beneficiaries of the Trust.

8 BY MR. LEWIS:

9 **Q. Because, to Grace, Grace**  
10 **will pay the same amount under the**  
11 **settlement regardless of how the TDP is**  
12 **drawn, correct?**

13 MR. LIESEMER: Object to the  
14 form.

15 MS. HARDING: Object to the  
16 form.

17 THE WITNESS: I guess that's  
18 probably part of it but, again,  
19 the terms of their constituency,  
20 the ultimate beneficiaries of the  
21 Trust and the way the Trust  
22 operates and the distribution  
23 procedure is something that they  
24 probably -- the asbestos claimants

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and the Future Claimants' Representative have a direct interest in.

BY MR. LEWIS:

**Q. Did you review any TDPs in other asbestos bankruptcy settlements?**

A. I have over the course of my career. I had reviewed them beforehand.

**Q. Did you review them in order to provide input concerning the TDP in this case?**

A. I think I may have pulled a couple out and taken a look at when the issue of the TDPs in this case came up. I also -- you know, early on in bankruptcies, Grace was a codefendant and participated, and so I probably was concerned at that point with what Trust Distribution Procedures in earlier bankruptcies said about, you know, codefendant claims and so on.

**Q. When you say "probably," do you mean that's one of the reasons you would have reviewed them?**

A. In the past, yes.

**Q. Okay. Do you understand the disease categories under the TDP that's been offered by this Plan?**

A. Yes.

**Q. Have you reviewed the severe pleural disease category under the TDP?**

A. Yes, I have.

**Q. Did you offer any input on behalf of Grace concerning the severe pleural disease category under the TDP?**

MS. HARDING: I will let you answer if you recall any input. But in terms of actual negotiations and discussions about the drafting, we are going to avoid those.

THE WITNESS: Yeah, I don't recall, and I think that, as a general rule, the issue of the disease category and Grace's view of it would be that it's primarily an issue for experts. And my recollection was, again, that

disease categories and the criteria were consistent with the understanding of the asbestos-related disease and myself as a non-expert, an attorney involved in resolving cases for many years, that they accurately or at least were consistent with the medical criteria that were used in evaluating cases by Grace and by other defendants in the asbestos litigation.

BY MR. LEWIS:

**Q. What is your understanding -- as a person primarily responsible for claims in Libby from 1985 to the date of the bankruptcy filing, what is your understanding of the nature of the disease in Libby?**

MS. HARDING: Object to form in terms of nature of disease.

But to the extent you can answer, go ahead.

THE WITNESS: That the --

MR. SCHIAVONI: No foundation, calls for privileged information, vague, ambiguous.

Do you want to know what you are telling him and what you are alleging? The whole thing is sort of --

MR. LEWIS: Counsel, that's a wide open question. It's a perfectly proper question.

Would you please read it back?

(The reporter read from the record as requested.)

MR. LIESEMER: I object to the form of the question. No foundation.

MR. SCHIAVONI: The basis is there is no personal knowledge of this witness. So you want him to just speculate and say what the plaintiffs' lawyers have told him? Fine. That's what you will get.



Page 154

1 answer, and now you have to move  
2 on.

3 MR. LEWIS: He never  
4 answered the question, sir.

5 MR. SCHIAVONI: You are not  
6 happy with it.

7 MS. HARDING: I think he  
8 tried very hard to answer a  
9 question that is...

10 BY MR. LEWIS:

11 **Q. Okay. Let me rephrase the**  
12 **question slightly. I am talking about**  
13 **Libby employees here.**

14 **As you categorize them in**  
15 **Exhibit-1, 91-1625 --**

16 A. Yes.

17 **Q. -- are those claims**  
18 **substantially similar to the Construction**  
19 **& Other claims set forth on line 38 of**  
20 **that document?**

21 MS. HARDING: Object to  
22 form. Again, I think it's a very  
23 important objection. It's overly  
24 broad. It assumes facts not in

Page 155

1 evidence. It makes comparisons  
2 between claims without giving any  
3 characteristics of the claims,  
4 disease, levels of exposure, time  
5 periods, all of those things. I  
6 think it's impossible to answer.

7 If you think you can answer  
8 it, Jay, or do your best, go  
9 ahead. I think it's asked and  
10 answered, but go ahead.

11 MS. BAER: It also assumes  
12 that you know what the definition  
13 of "substantially similar" is,  
14 which has not been defined here.

15 MR. LEWIS: He's the one  
16 that used the term "substantially  
17 similar." I just embraced it. It  
18 was his word.

19 MS. HARDING: In any  
20 event --

21 MR. LEWIS: So that's why I  
22 am entitled to inquire about it.

23 MR. SCHIAVONI: You don't  
24 understand what it means, either.

Page 156

1 I object. No one in the room  
2 understands.

3 MS. HARDING: Sorry, Jay.

4 MR. LEWIS: Do you want to  
5 answer the question please or we  
6 can have it read back again.

7 THE WITNESS: I do feel that  
8 I answered the question, again.

9 There are obviously  
10 differences. There are  
11 differences between every claim.  
12 One claim of 328,000 claims that  
13 were filed against Grace, there  
14 were differences from one to the  
15 other.

16 The Libby claims, in terms  
17 of the value, the values are  
18 reported here. But to talk  
19 about -- there are certainly  
20 similarities. They are all  
21 asbestos personal injury claims  
22 alleging pulmonary and lung  
23 problems and mesothelioma, lung  
24 cancer, pleural disease,

Page 157

1 asbestosis resulting from exposure  
2 to asbestos, and there are  
3 substantial similarities between  
4 the claims.

5 And, in my opinion, the  
6 Trust Distribution Procedures, as  
7 I read them, deal with these  
8 differences in terms of value and  
9 by providing, for example, an  
10 exposure if a person is exposed  
11 substantially to Grace products by  
12 a five or eight times multiplier  
13 of the value, they provide for  
14 litigation in the tort system,  
15 they provide for, you know, again,  
16 both the forum and the criteria to  
17 differentiate between different  
18 kinds of cases. And the Libby  
19 cases are asbestos personal injury  
20 cases, and there are differences  
21 in severity.

22 So the extent to which the  
23 Libby cases are different, the  
24 Trust Distribution Procedures

<p style="text-align: right;">Page 158</p> <p>1 address those differences.</p> <p>2 BY MR. LEWIS:</p> <p>3 <b>Q. Under the TDP, would the</b></p> <p>4 <b>average Libby claim be valued anywhere</b></p> <p>5 <b>near \$268,000 per claim?</b></p> <p>6 MS. HARDING: Object to the</p> <p>7 form and to the use of the term</p> <p>8 "average Libby claim." I think</p> <p>9 that's the problem with the entire</p> <p>10 deposition.</p> <p>11 But go ahead.</p> <p>12 MR. LIESEMER: Object to the</p> <p>13 form. Mr. Hughes is not going to</p> <p>14 be valuing claims under the TDP.</p> <p>15 It would be the Asbestos PI Trust.</p> <p>16 MR. LEWIS: Are they here</p> <p>17 today? Is the PI Trust here,</p> <p>18 anybody on their behalf?</p> <p>19 (No response.)</p> <p>20 THE WITNESS: Well, the PI</p> <p>21 Trust doesn't exist.</p> <p>22 MR. LEWIS: I know.</p> <p>23 THE WITNESS: And we don't</p> <p>24 know how they will be valued and</p>	<p style="text-align: right;">Page 160</p> <p>1 <b>Q. Why does a TDP value</b></p> <p>2 <b>mesothelioma claims at \$180,000 if the</b></p> <p>3 <b>average settlement for mesothelioma</b></p> <p>4 <b>claims system-wide for Grace was on the</b></p> <p>5 <b>order of \$90,000?</b></p> <p>6 MS. HARDING: Object to</p> <p>7 form, foundation.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: I think that</p> <p>10 the values that are included in</p> <p>11 the TDP are based upon the Grace</p> <p>12 historical settlement averages.</p> <p>13 But I am not familiar with the</p> <p>14 methodology in terms of how the</p> <p>15 relationship between those and --</p> <p>16 it's my understanding that it was</p> <p>17 done with the guidance of experts</p> <p>18 in the area, and I am not an</p> <p>19 expert in terms of the</p> <p>20 relationship between the two</p> <p>21 numbers.</p> <p>22 BY MR. LEWIS:</p> <p>23 <b>Q. So we have an average</b></p> <p>24 <b>settlement for mesothelioma that was 90,</b></p>
<p style="text-align: right;">Page 159</p> <p>1 the average is. So for me to</p> <p>2 answer your question would involve</p> <p>3 several layers of speculation, and</p> <p>4 I am not going to do it, quite</p> <p>5 frankly.</p> <p>6 BY MR. LEWIS:</p> <p>7 <b>Q. Your average settlement for</b></p> <p>8 <b>all mesotheliomas was on the order of</b></p> <p>9 <b>\$90,000, correct?</b></p> <p>10 MR. LIESEMER: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: Pre-petition?</p> <p>13 BY MR. LEWIS:</p> <p>14 <b>Q. Pre-petition.</b></p> <p>15 A. That sounds right, but I</p> <p>16 don't have the date right in front of me.</p> <p>17 <b>Q. Why does a TDP evaluate</b></p> <p>18 <b>mesotheliomas at \$180,000 per claim --</b></p> <p>19 MS. HARDING: Object to</p> <p>20 form.</p> <p>21 MR. LEWIS: Can I finish?</p> <p>22 MS. HARDING: I am sorry. I</p> <p>23 thought you were finished. Sorry.</p> <p>24 BY MR. LEWIS:</p>	<p style="text-align: right;">Page 161</p> <p>1 <b>but under the TDP, you get 180. And you</b></p> <p>2 <b>got an average settlement in Libby of</b></p> <p>3 <b>268, and under the TDP, the most they</b></p> <p>4 <b>could ever get, if they don't have</b></p> <p>5 <b>mesothelioma, is 50,000 times the payment</b></p> <p>6 <b>percentage? Is that what you understand</b></p> <p>7 <b>the TDP to say?</b></p> <p>8 MS. HARDING: Object to</p> <p>9 form.</p> <p>10 MR. LIESEMER: Object to the</p> <p>11 form of the question, speculative,</p> <p>12 no foundation.</p> <p>13 MS. HARDING: I think it is</p> <p>14 improperly characterized.</p> <p>15 BY MR. LEWIS:</p> <p>16 <b>Q. You understand the question,</b></p> <p>17 <b>right?</b></p> <p>18 A. If you could repeat the</p> <p>19 question, I would appreciate it.</p> <p>20 MR. LEWIS: Why don't we</p> <p>21 read it back? And I will withdraw</p> <p>22 it, if I think it's an unfair</p> <p>23 question.</p> <p>24 (The reporter read from the</p>



1 record as requested.)

2 MR. LIESEMER: Same  
3 objection.

4 MS. HARDING: Same  
5 objection.

6 THE WITNESS: I mean, in  
7 this area, the TDP says what it  
8 says.

9 MR. LEWIS: Okay.

10 THE WITNESS: I am not going  
11 to start giving my interpretation.  
12 The values are set forth  
13 specifically.

14 BY MR. LEWIS:

15 **Q. Do you take the position**  
16 **that the TDP is fair, or do you not take**  
17 **a position on that issue?**

18 A. I think I said that I think  
19 the TDP is -- in terms of the differences  
20 between the claims, that the criteria in  
21 terms of exposure, disease and so on,  
22 that differentiate between the hundreds  
23 of thousands of asbestos personal injury  
24 claims that were filed against Grace

PP's  
Ctr.

1 (The reporter read from the  
2 record as requested.)

3 THE WITNESS: I think that,  
4 like any valuation, when you are  
5 looking at a large population,  
6 that this information is a good  
7 measure. When you try to -- for  
8 example, when you talk about Libby  
9 claims, you have identified a much  
10 smaller population. And while  
11 it's a measure, there is always  
12 the potential which I think I  
13 believe is the case in the Libby  
14 situation, that there is a  
15 fundamental shift in terms of the  
16 types of claims we are seeing at  
17 Libby that were being filed that  
18 were 15, 20 years ago from those  
19 that I see that are being filed  
20 currently, both in terms of the  
21 exposure and the disease.

22 So while I agree that this  
23 is valuable data and most  
24 important data because it

1 pre-petition, that the Trust Distribution  
2 Procedure adequately addresses the  
3 difference in valuing the claims and  
4 provides a forum for those -- a procedure  
5 and forum for those claimants who differ  
6 with the valuation of the claims to  
7 litigate the issues.

8 **Q. Do you agree that the best**  
9 **estimate of the historical value of**  
10 **claims would be based on the information**  
11 **that's provided in Exhibit-1, page**  
12 **91-1625?**

13 A. That's --

14 MS. HARDING: I am just  
15 going to object to the form again  
16 with respect to the vague  
17 reference to claims and whether  
18 you are talking about what claims  
19 you are trying to value now.

20 MR. LIESEMER: Object to the  
21 form of the question.

22 MR. LEWIS: Would you read  
23 back it back? He was starting to  
24 answer.

PP's  
Ctr.

1 accurately reflects Grace's  
2 experience in the tort system, I  
3 think that, as you get into  
4 smaller groups, there is the  
5 potential that the smaller  
6 population can change over time.  
7 And so you are better off using  
8 criteria that addresses value,  
9 medical exposure that reflects a  
10 much broader population.

11 BY MR. LEWIS:

12 **Q. What claims are being filed**  
13 **since Grace went into bankruptcy that you**  
14 **are relying on in your answer?**

15 MS. HARDING: Object to  
16 form.

17 BY MR. LEWIS:

18 **Q. Claims to date?**

19 MS. HARDING: I don't know  
20 if he said filed or asserted.

21 THE WITNESS: I meant  
22 asserted.

23 BY MR. LEWIS:

24 **Q. What claims are there; do**

Page 294

1 prepare this witness for those  
2 questions because we weren't aware  
3 you were going to ask him about  
4 it.

5 MS. CASEY: I join in the  
6 objection. He was listed as the  
7 30(b)(6) deponent for insurance  
8 issues related to BNSF, which is  
9 why I prepared my questions for  
10 today.

11 But I have no further  
12 questions.

13 MR. SCHIAVONI: If you feel  
14 there aren't any questions that  
15 have been answered, ask them now.

16 MS. HARDING: Right. He's  
17 answering all of your questions.

18 MS. CASEY: He's already  
19 answered my questions and now said  
20 he does not know.

21 MR. SCHIAVONI: If there are  
22 any questions that you feel  
23 haven't been answered, you should  
24 state them right now, Counselor.

Page 295

1 MS. CASEY: He answered the  
2 questions.

3 Excuse me?

4 MS. HARDING: Never mind.  
5 He answered -- you asked a  
6 question, and he answered it.

7 THE WITNESS: Well, you  
8 didn't ask a question, actually.  
9 But...

10 MS. CASEY: Can you read the  
11 last question, please, and the  
12 answer if there was one?

13 (The reporter read from the  
14 record as requested.)

15 THE WITNESS: My point -- my  
16 answer is that -- the answer to  
17 the question is in the settlement  
18 agreement with CNA at Continental  
19 Casualty Company in assuming that  
20 the Exhibit 5 is accurate,  
21 policies, which have the policy  
22 number CCP 4834440, appear on  
23 Exhibit 5 and listed as settled  
24 insurance policies under the Plan.

Page 296

1 MS. CASEY: I have no  
2 further questions, but I would  
3 like to, in addition to the  
4 objections that have already been  
5 stated on the record, also object  
6 on the basis that the Debtors had  
7 not produced the insurance  
8 policies prior to Mr. Posner's  
9 deposition but has produced the  
10 insurance policies prior to  
11 Mr. Hughes' deposition. With  
12 that, I pass the witness.

13 MR. BROWN: Why don't we  
14 mark that as 11.

15 (Hughes-11 marked for  
16 identification at this time.)

17 - - -

18 EXAMINATION

19 - - -

20 BY MR. BROWN:

21 **Q. Good afternoon, Mr. Hughes.**  
22 **My name is Michael Brown. I represent**  
23 **GEICO, Republic Insurance Company, Seaton**  
24 **Insurance Company, and OneBeacon America**

PP's  
Obj:  
R

Page 297

1 **Insurance Company.**

2 **We have just had marked as**  
3 **Hughes-11 a document that I would like**  
4 **you to take a look at and tell me if you**  
5 **can identify it.**

6 **A. It's a letter indicted April**  
7 **25th, 2009 from Barbara Harding to**  
8 **counsel, and attached is the witness**  
9 **designations and topics of deposition and**  
10 **a listing of the designated witness based**  
11 **on deposition notices that have been**  
12 **filed in this case and the confirmation**  
13 **hearing.**

14 **Q. Okay. And have you seen**  
15 **this document before today?**

16 **A. I have.**

17 **Q. And just so it's clear, this**  
18 **is a compilation of all the various**  
19 **topics and particular Grace witness that**  
20 **is prepared to testify about the subjects**  
21 **where his name appears, correct?**

22 **A. Right.**

23 **Q. Okay. You can put that**  
24 **aside.**

PP's  
Obj:  
R



CI

PP's  
Obj: R Page 298

1 Are you generally familiar  
2 with Grace's liability insurance program?

3 A. Yes.

4 Q. Okay. Do you understand  
5 that Grace has various layers of  
6 insurance?

7 A. Yes.

8 Q. Okay. Could you describe  
9 for me your understanding of that?

10 A. Well, under the period of  
11 time from, say, pre-1985 when there was  
12 asbestos insurance available, Grace would  
13 each year or -- and it would have a  
14 primary policy with CNA from 1973 through  
15 '85, Maryland Casualty before that, and  
16 that there would be additional policies,  
17 excess policies, which would provide  
18 coverage for losses or claims in the  
19 event that the aggregate limits of the  
20 primary policies were exhausted.

21 And so a company like Grace  
22 would go up and buy, you know, coverage,  
23 insurance coverage for a particular year,  
24 a particular policy period, and they

CI

PP's  
Obj: R Page 299

1 would have a primary policy. And then  
2 they would have policies above that, say,  
3 you know, at \$5 million level, \$10  
4 million level, depending on how they  
5 assess their risk.

6 Q. Okay. And you have a  
7 general familiarity with the concept of a  
8 coverage chart, correct?

9 A. Yes.

10 Q. Okay. And you understand  
11 that there is various layers of coverage  
12 from the primary to the umbrella and the  
13 excess above that?

14 A. Yes.

15 Q. And Grace, as you just  
16 testified, purchased policies in each  
17 policy year at each of those levels?

18 A. Yes.

19 MR. BROWN: Let me mark a  
20 second document, and this will be  
21 Hughes-12.

22 (Hughes-12 marked for  
23 identification at this time.)

24 (Mr. Speights re-joined the

Page 300

1 deposition via teleconference at  
2 this time.)

3 CI BY MR. BROWN:

4 Q. Mr. Hughes, you have before  
5 you a document we marked as Hughes-12.  
6 Can you take a few moments to familiarize  
7 yourself with it?

8 A. Sure.

9 MS. HARDING: I am going to  
10 note for the record that we  
11 did designate Mr. Finke with  
12 respect to the Transfer Agreement.  
13 But if you want to ask prosecute  
14 Hughes a question --

15 MR. BROWN: I am not going  
16 to ask him a lot about the  
17 agreement. I am going to ask  
18 about the attachment to the  
19 agreement.

20 MS. HARDING: I don't think  
21 it changes the notation for the  
22 record. But go ahead and ask him  
23 questions, and to the extent he  
24 can answer without speculating...

CI

Page 301

1 BY MR. BROWN:

2 Q. Let me start by asking you  
3 whether you have seen the document marked  
4 Hughes-12 before?

5 A. I have seen the agreement  
6 before.

7 Q. Okay. Can you look at the  
8 back of it, and you will note that the  
9 agreement has some schedules?

10 A. Yes.

11 Q. I believe there are three of  
12 them.

13 Have you seen those  
14 schedules before today?

15 A. I can't say that I have seen  
16 these schedules. I have seen similar  
17 documents.

18 Q. Okay. Have you seen ones  
19 similar to what's been marked or what is  
20 identified as Schedule 1?

21 A. Yes.

22 Q. Okay. In what connection  
23 did you see the document that is attached  
24 as Schedule 1 to Hughes-12?



CI

PP's  
Obj: R

Page 302

1 A. Just in connection with the  
2 case, in connection with, you know, my  
3 involvement in asbestos litigation and  
4 the coverage issues associated with it to  
5 Jeff Posner and others within Grace. I  
6 think I have seen this policy list  
7 before.

8 **Q. Okay. Is this a document**  
9 **that Mr. Posner prepared; do you know?**

10 A. Not specifically, no.

11 **Q. Okay. Is it a document that**  
12 **someone at Grace prepared?**

13 A. I don't know this specific  
14 version of the document, but Mr. Posner  
15 certainly would be the person that if I  
16 were to have undertaken the task of  
17 creating this document, I would have  
18 consulted with Mr. Posner.

19 **Q. Okay. Can you take a look**  
20 **at the first page? It's a -- the**  
21 **Schedule is a 20-page document. And you**  
22 **will see that there are -- well, first of**  
23 **all, what do you understand the schedule**  
24 **generally to be?**

CI

PP's  
Obj: R

Page 303

1 A. The list of policies that  
2 were available to Grace to pay  
3 asbestos-related claims.

4 **Q. Okay. Would these be**  
5 **policies that would have been in the part**  
6 **of the general liability program that you**  
7 **indicated you were generally familiar**  
8 **with?**

9 A. Yes.

10 **Q. Okay. Can you describe for**  
11 **me what each of the headings along the**  
12 **top of the first page, what you**  
13 **understand those to mean?**

14 A. Well, the policy year is the  
15 year that the insurance policy covered in  
16 terms of losses that occurred in the year  
17 or at least triggered the insurance  
18 coverage for that period of time.  
19 Insurer is obviously the insurer. And  
20 then insurance company that's providing  
21 the coverage is obligated to provide  
22 insurance for losses that triggered the  
23 policy.

24 The policy number identifies

CI

Page 304

1 the specific insurance policies.  
2 Generally, you have a policy number  
3 identifying which policy. And then the  
4 layers, when we were talking about before  
5 about the program and how you have to  
6 umbrella policies and excess policies,  
7 and they are layered based on the amount  
8 of the coverage available for a  
9 particular policy period. That  
10 identifies which policy -- excuse me --  
11 which layer the particular policy is in  
12 the Grace coverage block.

13 **Q. If it says primary, that's**  
14 **the very bottom level of insurance; is**  
15 **that correct?**

16 A. Yes.

17 **Q. And then if it has a one**  
18 **next to it, is that the first layer**  
19 **excess?**

20 A. First layer excess would be  
21 the way I understand it.

22 **Q. And it goes up to -- the**  
23 **highest number I thought I saw was 8 and**  
24 **would be the highest level for any policy**

CI

Page 305

1 **year? That is the highest level of**  
2 **excess insurance?**

3 A. That's the highest I saw.

4 **Q. Okay. Now, I think you**  
5 **testified earlier that you were the**  
6 **person that was primarily responsible for**  
7 **handling the day-to-day defense of Grace**  
8 **PI claims at least internally at Grace;**  
9 **is that right?**

10 A. Yes.

11 **Q. Okay. And in that capacity,**  
12 **did you have occasion to deal with**  
13 **insurance issues?**

14 A. Yes. Again, as I have  
15 described, primarily in the context of  
16 Grace's obligations under insurance  
17 arrangements with reimbursement or  
18 coverage in place arranged. Grace had  
19 obligations to insurers in making sure we  
20 met those obligations and getting  
21 reimbursed under the agreements.

22 **Q. Okay.**

23 A. And the policies as well, I  
24 suppose.

PP's  
Obj:  
RPP's  
Obj:  
R



Page 310

1 to. I think it's unquestionably  
2 clear that we have gone over and  
3 beyond our requirements under  
4 30(b)(6) in this whole process.

5 MR. BROWN: Okay. Can I ask  
6 my next question?

7 MS. HARDING: Yes, you may.

8 BY MR. BROWN:

9 **Q. Mr. Hughes, let's go to**  
10 **other schedules for the moment. Let's**  
11 **take a look at the second schedule.**

12 MS. HARDING: Again,  
13 Mr. Hughes wasn't even designated  
14 with respect to this schedule or  
15 this exhibit, but go ahead. I am  
16 happy to let him answer the  
17 question.

18 MR. BROWN: We was  
19 designated as a person that would  
20 be produced on insurance issues.  
21 There are nine topics on that  
22 chart that had his name next to  
23 it. We don't need to quarrel  
24 about it. If he doesn't know the

Page 311

1 answer, fine.

2 BY MR. BROWN:

3 **Q. Mr. Hughes, my question with**  
4 **respect to Schedule 2 of Hughes-12 is, do**  
5 **you understand what the schedule**  
6 **reflects?**

7 A. Yes.

8 **Q. What is that?**

9 A. It's a list of the insurance  
10 settlement agreements -- settlement  
11 agreements which resolved coverage  
12 disputes with liability insurers that  
13 provided Grace with insurance coverage  
14 for asbestos-related personal injury and  
15 property damage claims and the dates of  
16 those agreements.

17 **Q. If you could take a look at**  
18 **Schedule 3, which is a couple pages**  
19 **along, do you have an understanding of**  
20 **what is reflected on Schedule 3?**

21 A. It's a similar list of  
22 insurers where we have what's  
23 characterized here as a asbestos  
24 reimbursement agreements.

Page 312

1 **Q. All right. Let's go back to**  
2 **Schedule 1 and specifically page 7 of**  
3 **Schedule 1.**

4 A. Okay.

5 **Q. And you heard me when I**  
6 **introduced myself that one of my clients**  
7 **is GEICO. You will see in the middle of**  
8 **the page that there are three policies**  
9 **for GEICO listed on page 7.**

10 **Do you see those?**

11 A. Yes.

12 **Q. Okay. Did Grace to your**  
13 **knowledge have any settlement with GEICO?**

14 A. Not to my knowledge.

15 **Q. Okay. Let's go a little bit**  
16 **further on to page 16. Another one of**  
17 **the companies that I indicated I**  
18 **represent is Republic, and you will see**  
19 **toward the top of that page there are two**  
20 **policies listed for Republic.**

21 **To your knowledge, did Grace**  
22 **have any settlements with Republic**  
23 **Insurance Company?**

24 A. Again, I am familiar with

Page 313

1 and maintain a list in my office because  
2 of my involvement in terms of what -- I  
3 don't know and don't recall specifically  
4 an agreement with Republic.

5 But the other issue, of  
6 course, when you come with insurance  
7 companies is kind of the changing  
8 landscape of who they are. But I don't  
9 specifically recall Republic Insurance.  
10 I think there are over 60 or 70  
11 agreements, settlement agreements with  
12 different kinds.

13 **Q. Would you agree with me that**  
14 **Republic Insurance Company does not**  
15 **appear on either Schedule 3 -- excuse me**  
16 **-- either 2 or 3?**

17 A. No.

18 **Q. Does that help refresh your**  
19 **recollection as to whether Grace had --**

20 MR. LEWIS: That sounds like  
21 a double negative. I don't know  
22 that the record is clear on that.

23 MR. SCHIAVONI:

24 No, he doesn't agree or not?

PP's  
Obj:  
RPP's  
Obj:  
R



Page 314

Page 316

1 MR. LEWIS: Can you read it  
2 back? I might have muddled it.

3 (The reporter read from the  
4 record as requested.)

5 THE WITNESS: I agree that  
6 it's correct.

7 BY MR. BROWN:

8 **Q. We were talking about**  
9 **Republic. Why don't we try to fix that.**

10 **I am correct, am I right**  
11 **knot that Republic Insurance Company does**  
12 **not appear on Schedule 2 or 3?**

13 A. Yes, you are correct. It  
14 does not appear on Schedule 2 or 3.

15 **Q. Does that refresh your**  
16 **recollection as to whether Grace had a**  
17 **settlement agreement with Republic?**

18 A. I have no recollection that  
19 it does, and since it doesn't appear on 2  
20 and 3 and my understanding is 2 and 3 are  
21 accurate, then I would say my  
22 understanding would be no, that there is  
23 no settlement agreement with Republic.

24 **Q. Okay. You indicated at the**

1 **question, go ahead.**

2 **THE WITNESS: Well, to**  
3 **provide insurance coverage and to**  
4 **provide indemnity payments when**  
5 **the underlying policies under the**  
6 **terms of the insurance contract.**  
7 **If a loss covered within the scope**  
8 **of the coverage provided to the**  
9 **insured and that the underlying**  
10 **policies have been exhausted, that**  
11 **it would trigger an obligation on**  
12 **the part of the excess insurer to**  
13 **pay the claim, again, in a manner**  
14 **consistent with the insurance**  
15 **policy.**

16 **BY MR. BROWN:**

17 **Q. Okay. And just following up**  
18 **on that latter phrase at the end of your**  
19 **answer, do you understand generally --**  
20 **and I understand that it may be different**  
21 **from policy to policy. But do you**  
22 **understand generally that the insurer has**  
23 **a duty to cooperate with the excess**  
24 **insurer?**

Page 315

Page 317

1 **outset that you were generally familiar**  
2 **with Grace's insurance program.**

3 **Are you generally familiar**  
4 **with the rights and duties of the**  
5 **insured, on the one hand, and the**  
6 **insurer, on the other, under an excess**  
7 **policy?**

8 MS. HARDING: Object to  
9 form.

10 Go ahead.

11 **THE WITNESS: Yes, I am**  
12 **generally familiar.**

13 BY MR. BROWN:

14 **Q. Okay. Can you describe your**  
15 **familiarity in terms of -- what do you**  
16 **understand to be the insurer's, the**  
17 **excess insurer's rights under an excess**  
18 **policy?**

19 MS. HARDING: I am just  
20 going to object to form and to the  
21 extent it's overly broad and  
22 doesn't refer to a specific  
23 policy.

24 But if you can answer the

1 MS. HARDING: Object to  
2 form. Again, same objection.

3 **THE WITNESS: I know**  
4 **generally that in terms of**  
5 **insurance policies, an insured has**  
6 **a duty to cooperate.**

7 BY MR. BROWN:

8 **Q. And the insured has a duty**  
9 **to give notice of claims; you are**  
10 **familiar with that as well?**

11 A. Yes.

12 **Q. And are you generally**  
13 **familiar at that the excess layer, the**  
14 **insure has a right to associate in the**  
15 **defense of claims?**

16 MS. HARDING: Object to  
17 form.

18 **THE WITNESS: To associate**  
19 **in defense of claims?**

20 BY MR. BROWN:

21 **Q. Yes.**

22 **A. Yes, although I think that,**  
23 **again, that's something that you alluded**  
24 **to earlier that I would think varied from**



Page 318  
PP's  
Obj: R, BE, F

Page 320

1 policy to policy in specific relation.

2 **Q. Okay. To your knowledge,**  
3 **does Grace have any agreement with GEICO**  
4 **pursuant to which GEICO gave up any of**  
5 **its rights or ceded any of its rights**  
6 **under the policies that appear page 7 of**  
7 **Schedule 1 of Hughes-12?**

8 MS. HARDING: Object to  
9 form.

10 THE WITNESS: Not to my  
11 knowledge.

12 BY MR. BROWN:

13 **Q. And would your answer be the**  
14 **same with respect to Republic?**

15 A. Yes.

16 **Q. To your knowledge, has GEICO**  
17 **or Republic given up any of its claims**  
18 **handling rights pursuant to any agreement**  
19 **with Grace?**

20 MS. HARDING: Just objection  
21 to form. That assumes facts not  
22 in evidence.

23 But go ahead.

24 THE WITNESS: Not to my

1 for an exhaustive list.

2 MS. HARDING: Right.

3 THE WITNESS: As I said  
4 earlier, I was responsible for the  
5 day-to-day management and  
6 resolution of the claims  
7 internally. And as such, I worked  
8 with the outside law firms in  
9 litigating the cases and settling  
10 cases, and internally I worked  
11 with different groups within the  
12 company to appropriately record  
13 and manage the provision of  
14 services from outside counsel  
15 firms, payment of the firms,  
16 payment of the settlements.

17 BY MR. BROWN:

18 **Q. Okay. What was the period**  
19 **of time over which you had that role?**

20 A. I would say from 1989  
21 through 19 -- excuse me -- through 2001,  
22 April of 2001.

23 **Q. Okay. And that was the**  
24 **petition date?**

Page 319  
PP's  
Obj: R

Page 321

1 knowledge.

2 BY MR. BROWN:

3 **Q. Okay. You indicated earlier**  
4 **that your title is senior litigation**  
5 **counsel; is that correct?**

6 A. Yes.

7 **Q. And I guess at the time of**  
8 **the petition you reported to Mr. Siegel;**  
9 **is that correct?**

10 A. Yes.

11 **Q. And he was the general**  
12 **counsel at the time?**

13 A. Yes.

14 **Q. How would you describe your**  
15 **responsibilities with respect to asbestos**  
16 **personal injury claims pre-petition?**

17 MS. HARDING: I am just  
18 going to object to the form to the  
19 extent it's overly broad, requires  
20 an overly broad interpretation.

21 But to the extent you can  
22 answer it --

23 MR. LEWIS: I am not.

24 MR. BROWN: I am not asking

1 A. Yes.

2 **Q. Is it fair to say that you**  
3 **are the person at Grace most**  
4 **knowledgeable with respect to the manner**  
5 **in which asbestos personal injury claims**  
6 **were handled pre-petition?**

7 A. Yes.

8 **Q. Did Grace have national**  
9 **coordinating counsel with respect to**  
10 **asbestos bodily injury claims?**

11 A. It depends on how you define  
12 national coordinating counsel. We had a  
13 national -- Casner & Edwards in Boston  
14 handled all our documents, and Bob  
15 Murphy, a partner there, would  
16 participate in trials and work with  
17 outside counsel. And there were some  
18 other lawyers around the country who I  
19 would call upon to do that as well.

20 **Q. Okay. I gather from your**  
21 **answer that he didn't have the official**  
22 **title national coordinating counsel?**

23 A. Well, also, I think after  
24 1989, the outside counsel didn't report



CI

PP's  
Obj: R Page 322

1 to him. I view national coordinating  
2 counsel kind of strictly as I understand  
3 it is when the outside counsel in a  
4 particular jurisdiction report on a  
5 day-to-day basis to the firm, and then  
6 the national counsel, in turn, reports to  
7 the client and the corporation.

8 And we had it set up a  
9 little differently, that after 1989 --  
10 again, before that, I viewed Bob Murphy  
11 as serving what I would call traditional  
12 national coordinating counsel and that  
13 the outside firms reported to him. But  
14 we kind of reversed that.

15 **Q. Okay. If I understood your**  
16 **answer then, is it fair to say from 1989**  
17 **to 2001, that effectively you acted as**  
18 **the national coordinating counsel?**

19 A. Yeah, with the assistance of  
20 Casner & Edwards and Bob Murphy and  
21 others.

22 **Q. Mr. Finke, I believe,**  
23 **testified that in addition to Casner &**  
24 **Edwards Grace had approximately 25 other**

CI

Page 324

1 But, again, there were  
2 communications on the status of cases on  
3 what was going on, on working with Grace  
4 witnesses, expert, fact, was done through  
5 me. And I made the arrangements. The  
6 only exception to that was, again, with  
7 Casner & Edwards that the process worked  
8 that discovery responses, Grace's  
9 discovery responses in the underlying  
10 cases, those would be -- I would be  
11 copied on them. But they would be  
12 directly sent to Casner & Edwards and Bob  
13 Murphy or the associates at that firm  
14 that were actually prepared and would  
15 work directly with the local counsel in  
16 preparing responses.

17 **Q. Okay. Is it fair to say**  
18 **that you and the local firms, the 50 or**  
19 **so firms that you testified that defended**  
20 **Grace, and the Casner & Edwards firm**  
21 **acted as a group in the defense of**  
22 **asbestos claims asserted against Grace?**

23 A. Yes.

24 MS. HARDING: Object to

CI

PP's  
Obj: R Page 323

1 **firms around the country that were**  
2 **defending Grace in various jurisdictions**  
3 **against asbestos PI claims.**

4 **Does that sound about right**  
5 **to you?**

6 A. It sounds a little low,  
7 actually, since there are 50 different  
8 states and then I think we had cases in  
9 virtually every state and in some  
10 jurisdictions, California, Texas, would  
11 have more than one counsel.

12 **Q. So what would be your**  
13 **estimate or number?**

14 A. My estimate would be 50.

15 **Q. Now, what was your**  
16 **interaction with each of those 50 or so**  
17 **law firms in terms of defending against**  
18 **asbestos claims?**

19 A. They would report on a  
20 regular basis in terms of developments,  
21 they would -- again, obviously when you  
22 talk about 50 firms, a lot of the level  
23 of activity of some of the firms was lot  
24 less than others.

1 form.

2 Go ahead.

3 BY MR. BROWN:

4 **Q. Can you describe for me the**  
5 **types of things that that group did in**  
6 **defending Grace against asbestos claims?**

7 A. Virtually everything an  
8 attorney would do representing the  
9 company in asbestos or any kind of toxic  
10 tort case. You know, they responded to  
11 complaints, they responded to discovery,  
12 they appeared on Grace's behalf at  
13 depositions, they tried cases, they  
14 negotiated settlements, they participated  
15 in defense groups.

16 **Q. Let me just give you an**  
17 **example. A complaint comes in the door.**  
18 **Was it the responsibility of whatever**  
19 **counsel was handling that particular case**  
20 **to look at the complaint, to see if the**  
21 **complaint had procedural defects or the**  
22 **statute of limitations had expired, to do**  
23 **those sort of things?**

24 A. Yeah. The complaints came

PP's  
Obj: RPP's  
Obj: R



PP's  
Obj: R Page 326

1 and generally were served through us. I  
2 know some people had systems where local  
3 counsel accepted service. We did not do  
4 that.

5 We had a system where when  
6 the complaint was entered into the case  
7 management system, it automatically sent  
8 the complaint to the firm that had been  
9 designated as local counsel in that  
10 jurisdiction, and that local counsel,  
11 once they received the complaint, review  
12 the complaint and file an appropriate  
13 response and then handle the case.

14 **Q. And an appropriate response**  
15 **might be a motion to dismiss? It could**  
16 **be an Answer?**

17 A. It could be an Answer; it  
18 could be a motion to dismiss. You have  
19 to keep in mind we don't have to get --  
20 we have to keep in mind the asbestos  
21 personal injuries cases in a lot of  
22 jurisdictions, a lot of this was kind of  
23 institutionalized through case management  
24 orders that in some cases, all you had to

PP's  
Obj: R Page 327

1 do was enter an appearance. There  
2 wasn't -- some of the analysis because of  
3 the repetitious nature of it, that  
4 typically if I was involved in a lawsuit  
5 today as an in-house lawyer and sent it  
6 to somebody, we might sit down and talk  
7 about what the Answer is and what the  
8 allegations are.

9 In an asbestos case, again,  
10 because there were thousands of them --  
11 in some cases there were actually what I  
12 would call form Answers and form  
13 Complaints and so on. So it was highly  
14 managed by a case management order and  
15 the court.

16 **Q. Let me give you an example**  
17 **from my own experience and ask you**  
18 **whether Grace did these sort of things.**

19 I used to do some of the  
20 that work when I was a junior associate,  
21 and one of the things I was charged with  
22 was reviewing complaints and finding out  
23 if there were procedural defects with  
24 complaints. And sometimes the complaints

Page 328

1 would come in in a box load and you would  
2 look through them and see if they made  
3 the statute of limitations, whether they  
4 had other procedural defects that might  
5 have been peculiar to the given  
6 jurisdiction, and, if appropriate, file  
7 motions, file preliminary objections.  
8 It's called different things in different  
9 jurisdictions.

10 **Were your local counsel**  
11 **doing that sort of thing pre-petition?**

12 A. Yes.

13 MS. HARDING: Object to  
14 form. Are you asking him  
15 generally did that happen or did  
16 it happen with all cases?

17 MR. BROWN: I am trying to  
18 get a sense of how the cases were  
19 handled pre-petition, whether  
20 motions were filed if it was  
21 appropriate.

22 MS. HARDING: Right. But  
23 they have hundreds of thousands of  
24 cases. Are you just saying did

Page 329

1 that ever happen or are you asking  
2 if that happened in every case?

3 MR. BROWN: No.

4 MS. HARDING: I am asking  
5 you because it's not clear.

6 MR. BROWN: I am asking him  
7 whether in the course of  
8 evaluating a case that came in the  
9 door, whether it was the  
10 responsibility of counsel to look  
11 at it for procedural defects and,  
12 if appropriate, file a motion and  
13 if appropriate, file an answer.

14 THE WITNESS: Yes.

15 BY MR. BROWN:

16 **Q. You also mentioned**  
17 **discovery, and I think you said the**  
18 **Casner & Edwards firm, if I understood**  
19 **you correctly, handled Grace's responses**  
20 **to discovery; is that correct?**

21 A. Asbestos personal injury  
22 cases, yes.

23 **Q. Okay. How was the discovery**  
24 **that Grace took of claimants handled by**